FILED
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MICHAEL RODAK, JR., CLERK

APPENDIX

IN THE

Supreme Court of the United States

OCTOBER TERM, 1977.

No. 76-1750

HAROLD D. STUMP, JOHN HINES, M.D., HARRY M. COVELL, M.D., AND WARREN G. SUNDAY,
Petitioners,

VS.

LINDA KAY SPARKMAN AND LEO SPARKMAN,
Respondents.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT.

PETITION FOR CERTIORARI FILED JUNE 9, 1977 CERTIORARI GRANTED OCTOBER 3, 1977.

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APPENDIX

Date	NR	Proceedings
11/26/75	1	Complaint filed. Summons issued and mailed to Marshal. ww
12/ 2/75	2	William F. McNagny enters appearance for defs. Warren G. Sunday, John H. Hines, M.D., John C. Harvey, M.D. and Harry M. Covell, M.D. alm
12/ 3/75		Marshal makes returns on the following summons:
	3	L. C. Baker, served 12/1/75, $10.44.
	4	Ora E. McFarlin, served 12/1/75, $3.00.
	5	Warren G. Sunday, served 12/1/75, $3.00.
	6	Harold S. Stump, served 12/1/75, $3.00.
	7	John H. Hines, M.D., served 12/1/75, $3.00.
	8	John C. Harvey, M.D., served 12/1/75, $3.00.
	9	Harry M. Covell, M.D., served 12/1/75, $3.00. ww
12/ 4/75	10	Carl J. Suedhoff, Jr. enters appearance as attorney of record for defendant DeKalb Memorial Hospital, Inc. ww
12/ 5/75	11	Motion for Enlargement of Time Within Which to File Responsive Pleading filed by Carl J. Suedhoff, Jr. counsel for DeKalb Memorial Hospital. ww
12/ 5/75	12	Order Entered. (SE) Eschbach, Judge. Pursuant to the motion of DeKalb Memorial Hos-

		pital filed this date, time is enlarged to and including the 16th day of January, 1976 within which to file responsive pleading to plaintiffs' complaint. Copies to Richard H. Finley, William F. McNagny, Carl J. Suedhoff, Harold D. Stump, Ora E. McFarlin 12/5/75. ww
12/ 5/75	13	Exhibit titled "Petition to Have Tubal Litigation Performed on Minor and Indemnity Agreement" filed. slm/ww
12/12/75	14	H. Charles Winans enters appearance as counsel for defendant Ora E. McFarlin. es
12/18/75	15	Phil M. McNagny, Jr. enters his appearance for Def. Harold D. Stump. Cert of Serv. ww
12/18/75	16	Answer of Def. Harold D. Stump and Motions to Dismiss filed. Cert of Serv. ww
12/19/75	17	Carl J. Suedhoff, Jr. enters written appearance as counsel for defendant John C. Harvey, M.D. ww
12/19/75	18	Motion for Enlargement of Time within Which to File Responsive filed by def. John C. Harvey, M.D. by counsel. Cert of Serv. ww
12/19/75	19	Order Entered. (SE) Eschbach, Judge. Defendant John C. Harvey, M.D., shall have to and including the 16th day of January, 1976 in which to file responsive pleading to plaintiff's complaint. Copies to: H. Charles Winans, Carl J. Suedhoff, Jr., William F. McNagny, Phil M. McNagny, Jr., Richard A. Finley. 12/19/75. ww
12/22/75	20	Answer of Defendants, Warren G. Sunday, John H. Hines, M.D. and Harry M. Covell, M.D. filed. Cert of Serv. ww

12/23/75	21	Answer of Ora E. McFarlin filed. Cert. of Serv. ww
1/ 5/76	22	Motion for Extension of Time for Filing Answer Brief filed by plaintiffs. Cert. of Serv. ww
1/ 5/76	23	Order Granting Extension of Time entered. (SE) Eschbach, Judge. The time is extended to and including the 16th day of January, 1976 in which plaintiffs have to answer the motions to dismiss heretofore filed by defendant, Harold D. Stump. Copies to: H. Charles Winans, Carl J. Suedhoff, Jr., William F. McNagny, Phil M. McNagny, Jr., Richard H. Finley 1/5/76. ww
1/13/76	24	Motion to Dismiss filed by defs. Hines, Covell, Sunday by counsel. Cert of Serv. ww
1/14/76	25	Motion for Enlargement of Time Within Which to File Responsive Pleading filed by defendants Harvey and DeKalb Memorial Hospital. Cert of Serv. ww
1/14/76	26	Order Entered. (SE) Eschbach, Judge. Defendants Harvey and Dekalb Memorial Hospital have to and including the 14th day of February, 1976 within which to file responsive pleading to plaintiff's complaint. Copies to: Richard H. Finley, Phil M. McNagny, Jr., William F. McNagny, Carl J. Suedhoff, Jr., H. Charles Winans 1/14/76. ww
1/16/76	27	Plaintiffs' Reply Brief to the Memorandum Filed on Behalf of Harold D. Stump in Support of His Motion to Dismiss filed. Cert. of Serv. ww

1/27/76	28	Correction to Plaintiffs' Reply Brief to the Memorandum Filed on Behalf of Harold D. Stump in Support of His Motion to Dismiss filed. Cert. of Serv. ww
1/27/76	29	Motion for Extension of Time for Filing Answer Brief filed by counsel for plaintiff. Cert. of Serv. ww
1/27/76	30	Order Granting Extension of Time entered. (SE) Eschbach, Judge. The Court now extends the time in which plaintiffs may file their answer brief to and including 2/16/76. Copies to Richard H. Finley, Phil M. McNagny, Jr., William F. McNagny, Carl J. Suedhoff, Jr., H. Charles Winans 1/27/76. ww
2/17/76	31	Plaintiffs' Reply Brief to Defendants John H. Hines, M.D., Harry M. Covell, M.D., and Warren G. Sunday's Memorandum in Support of Their Motion to Dismiss filed. Cert. of Serve. www
2/17/76	32	Motion to Dismiss filed by Carl J. Suedhoff, Jr., counsel for defendants John C. Harvey, M.D., and DeKalb Memorial Hospital. Cert. of Serv. es
2/17/76	33	Motion for Oral Argument Concerning Pending Motions to Dismiss Filed by Various Defendants, filed by Carl J. Suedhoff, Jr., counsel for the defendants John C. Harvey, M.D., and DeKalb Memorial Hospital. es
3/ 2/76	34	Motion for Extension of Time for Filing Answer Brief filed by Plaintiffs. Cert. of Serv. es
3/ 2/76	35	Order entered. (SE) Eschbach, Judge. Plaintiffs' Motion for Extension of Time is granted

		and extends the time in which Plaintiffs may file their answer brief to and including the 29th day of March, 1976. Copies to Richard H. Finley, William F. McNagny, Carl J. Suedhoff, Jr., H. Charles Winans, Phil M. McNagny, Jr. 3/2/76. es
3/29/76	36	Plaintiffs' Reply Brief to the Memoranda of Defendants, John C. Harvey, M.D. and Dekalb Memorial Hospital, Inc., filed in Support of Their Motion to Dismiss filed. Cert. of Serv. slm
5/13/76	37	Memorandum of Decision and Order Entered. (SE) Eschbach, Judge. Pursuant to the various Rule 12(b) motions seeking dismissal for want of jurisdiction and for failure to state a claim upon which relief can be granted, defendants' motions to dismiss are granted, and plaintiffs' first and fourth causes of action are hereby dismissed for failure to state a claim upon which relief can be granted; and the remaining claims are dismissed for lack of jurisdiction over the subject matter. Copies to: H. Charles Winans, Carl J. Suedhoff, Jr., William F. McNagny, Phil M. McNagny, Jr., Richard H. Finley 5/14/76. ww
5/14/76	38	Clerk's Entry of Judgment filed. Francis T. Grandys, Cierk by Wanda Webster, Deputy. Copies to: Richard H. Finley, William F. McNagny, Carl J. Suedhoff, Jr., H. Charles Winans, Phil M. McNagny, Jr. 5/14/76. ww
6/10/76	39	Notice of Appeal filed by Linda Kay Sparkman and Leo Sparkman, plaintiffs. Cert. of Serv. es

6/10/76	40	Appeal Bond in the sum of $250.00 in cash as security for costs on appeal to the Court of Appeals for the Seventh Circuit, filed. es
6/10/76	41	Clerk's Certification of Notice of Appeal filed. Copies to Richard H. Finley, William F. McNagny, Carl J. Suedhoff, Jr., H. Charles Winans, Phil M. McNagny, Jr. 6/10/76. es
6/21/76	42	George E. Fruechtenicht enters appearance as counsel for the defendant Harold D. Stump. es
7/ 7/76	43	File sent to U. S. Court of Appeals, Seventh Circuit. es
7/18/77	44	Certified copy of the judgment and copy of the opinion of the Court' received from U. S. Court of Appeals. Taxed in favor of Linda Kay Sparkman and Leo Sparkman, plaintiff-appellants, total of $295.08. Judgment of District Court is REVERSED, with costs and REMANDED. Record to be returned at a later date. es
8/ 7/77	45	Order for pre-trial conference entered. (SE) Eschbach, Judge. Pre-trial conference is set for Friday, October 7, 1977 at 1:00 p.m. Copy to Richard H. Finley, George E. Fruechtenicht, William F. McNagney, Carl J. Suedhoff, Jr., H. Charles Winans 7/7/77. ww
8/ 8/77	46	Petition for Continuance of Pre-Trial Conference filed. kh/slm
8/ 9/77	47	Pursuant to petition filed 8-8-77, the pre-trial conference of this cause now scheduled for 10-7-77 is continued without date. Provided, however, that counsel for the pltf herein shall file a written status report with this court

		promptly upon notification of the ruling of the Supreme Court of the U. S. on the petition for writ of certiorari filed on behalf of the defs herein. (SE) Eschbach, Judge. Copy to Richard Finley, Wm. F. McNagny, Carl J. Suedhoff, Charles Winans, Phil M. McNagny, Jr. and Geo. E. Fruechtenicht 8-9-77. kh/slm
10/19/77	48	One volume of record received from the U. S. Court of Appeals for the Seventh Circuit. Certified copies of the docket sheets and original record mailed to the U. S. Supreme Court, Washington, D. C. this date. kh

UNITED STATES DISTRICT COURT
Northern District of Indiana
Fort Wayne Division

LINDA KAY SPARKMAN and LEO SPARKMAN,
Plaintiffs,

vs.

ORA E. MCFARLIN, WARREN G. SUNDAY, HAROLD D. STUMP, individually and as Judge of the Circuit Court of DeKalb County, Indiana, JOHN H. HINES, M. D., JOHN C. HARVEY, M. D., HARRY M. COVELL, M. D., and DEKALB MEMORIAL HOSPITAL, INC., a corporation,
Defendants.

Civil No. F 75-129
COMPLAINT

PRELIMINARY STATEMENT

This is an action at law to redress the deprivation of rights, privileges and immunities secured to the Plaintiff, Linda Kay Sparkman, by the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States, and 42 U. S. C. §§ 1983 and 1985[3]. Linda Kay Sparkman seeks damages because of the deprivation of her rights and the physical, mental and emotional injuries she has sustained due to the actions of the Defendants in performing an operation of sterilization upon her which infringed upon her rights to privacy, due process of law and equal protection of the laws under the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States. The action of Plaintiff, Leo Sparkman, for damages derives from the action of Plaintiff, Linda Kay Sparkman.

In addition, Plaintiff, Linda Kay Sparkman, seeks to have this Court declare unconstitutional on its face and as applied those sections of the Acts of 1961, ch. 91, § 1, p. 178; as amended by the Acts of 1973, P. L. 97, § 7, p. 566, "Medical or surgical treatment of incompetent—Consent." [Burns Indiana Statutes Annotated, Code Edition, 16-8-3-1], which seek to make binding on a minor a consent given by a parent to improper and unnecessary surgery. This statute is challenged on the grounds that it conflicts with the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States.

JURISDICTION

[1] The amount in controversy exceeds, exclusive of interest and costs, the sum of Ten Thousand Dollars ($10,000.00). Jurisdiction is conferred on this Court by 28 U. S. C. §§ 1331 and 1343, and 42 U. S. C. §§ 1983 and 1985. Declaratory relief is sought pursuant to 28 U. S. C. §§ 2201 and 2202.

PARTIES

[2] Plaintiff, Linda Kay Sparkman, is a United States citizen and a resident of Noble County, Indiana. She is nineteen (19) years old, born January 24, 1956. She is married and resides with her husband, Leo Sparkman, in Kendallville, Indiana. Prior to marriage, her name was Linda Kay Spitler.

[3] Plaintiff, Leo Sparkman, is a United States citizen and a resident of Noble County, Indiana. He is twenty (20) years old, was married to Linda Kay Sparkman on August 18, 1973, and is presently residing with his wife in Kendallville, Indiana.

[4] Defendant, Ora E. McFarlin, is a citizen of the United States, a resident of Noble County, Indiana, and is over the age of twenty-one (21) years. She is the natural mother of Plaintiff, Linda Kay Sparkman, and on the 9th day of July, 1971, she executed a "Petition to Have Tubal Ligation Performed on Minor

and Indemnity Agreement" requestion that a tubal ligation be performed upon her daughter.

[5] Defendant, Warren G. Sunday, a practicing attorney, is a citizen of the United States, a resident of DeKalb County, Indiana, and is over the age of twenty-one (21) years. He drafted the Petition signed by Ora E. McFarlin and he witnessed, as a Notary Public, the execution of the Petition by Ora E. McFarlin.

[6] Defendant, Harold D. Stump, is Judge of the Circuit Court of DeKalb, Indiana, is a citizen of the United States, a resident of DeKalb County, Indiana, and is over the age of twenty-one (21) years. On July 9, 1971, he signed the "Petition to Have Tubal Ligation Performed on Minor and Indemnity Agreement" approving of the Petition as executed and requested by Ora E. McFarlin. He is sued individually and in his official capacity.

Statement of Claim

[7] Defendant, John H. Hines, a medical doctor, is a citizen of the United States, a resident of DeKalb County, Indiana, and is over the age of twenty-one (21) years. On July 16, 1971, he performed an operation of sterilization (a tubal ligation) upon Plaintiff, Linda Kay Sparkman.

[8] Defendant, John C. Harvey, a medical doctor, is a citizen of the United States, a resident of DeKalb County, Indiana, and is over the age of twenty-one (21) years. He assisted, as anesthesiologist, in the performance of the tubal ligation on Plaintiff, Linda Kay Sparkman.

[9] Defendant, Harry M. Covell, a medical doctor, is a citizen of the United States, a resident of DeKalb County, Indiana, and is over the age of twenty-one (21) years. He assisted in the performance of the tubal ligation on Plaintiff, Linda Kay Sparkman.

[10] Defendant, DeKalb Memorial Hospital, Inc., is a corporation existing under the laws of the State of Indiana. The hospital is located in DeKalb County, Indiana. Linda Kay Sparkman was sterilized at the DeKalb Memorial Hospital, Inc.

Statement of Claim

[11] Plaintiff, Linda Kay Sparkman, was fifteen (15) years old on June 20, 1971, when she was admitted into the Defendant, DeKalb Memorial Hospital, Inc., in Auburn, Indiana, by Defendant, Ora E. McFarlin, under the care of Defendant, John H. Hines, M. D., for the treatment of appendicitis. She was discharged from the hospital by Dr. Hines on June 22, 1971, as improved.

[12] On July 9, 1971, Defendant, Ora E. McFarlin, Linda Kay Sparkman's mother, executed a document entitled "Petition to Have Tubal Ligation Performed on Minor and Indemnity Agreement," a copy of which document is attached hereto, made a part hereof, and marked "Exhibit A." This document was prepared by Defendant, Warren G. Sunday, and he witnessed the execution of the document by Defendant, Ora E. McFarlin.

[13] On July 9, 1971, Defendant, Harold D. Stump, Judge of the Circuit Court of DeKalb County, Indiana, apparently without a hearing, without Plaintiff, Linda Kay Sparkman, present, and without representation on her behalf, signed the Petition authorizing, under color of state law, the sterilization of Plaintiff, Linda Kay Sparkman, by Defendant, John H. Hines, M. D., at Defendant, DeKalb Memorial Hospital, Inc.

[14] On July 15, 1971, Linda Kay Sparkman was entered into Defendant, DeKalb Memorial Hospital, Inc., by her mother, Defendant, Ora E. McFarlin, ostensibly for the purpose of having her appendix removed.

[15] On July 16, 1971, Defendant, John H. Hines, M.D., with the knowledge, approval, acquiescence, aid and assistance of Defendants, John C. Harvey, M.D., Harry M. Covell, M.D. and DeKalb Memorial Hospital, Inc., without first informing her, performed an operation of sterilization upon Plaintiff, Linda Kay Sparkman.

[16] At the time of the operation, Defendant, John H. Hines, M.D., said he was performing the sterilization on Linda Kay Sparkman in accordance with a Court's feelings and as a service to the community in preventing the mentally slow Linda Kay Sparkman from having children who would be wards of the state.

[17] On July 20, 1971, Plaintiff, Linda Kay Sparkman, was released from Defendant, DeKalb Memorial Hospital, Inc., still unaware that she had been sterilized.

[18] On August 18, 1973 Linda Kay Sparkman was married and a few months thereafter she asked her mother, Defendant Ora E. McFarlin, why she was not getting pregnant. Plaintiff, Linda Kay Sparkman, was told by her mother at that time that she could not have children then because her Fallopian tubes had been tied, but that her tubes would come untied on their own accord.

[19] Plaintiff, Linda Kay Sparkman, did not immediately tell her husband what she had been told by her mother, for fear he would divorce her, but during or around February, 1974, Linda Kay Sparkman did tell her husband that she might have had her tubes tied when her appendix was removed. Plaintiff, Linda Kay Sparkman, and her husband, Leo Sparkman, immediately went to see Defendant, John H. Hines, M.D., around February, 1974, and they were told by him that he did not do anything to Linda Kay Sparkman but remove her appendix.

[20] Linda Kay Sparkman and Leo Sparkman began having domestic problems in the late spring of 1975, partially because of their inability to have children. They consulted an attorney for help, and in May, 1975, their attorney wrote a letter to Defendant, John H. Hines, M.D., requesting information about the nature of the operation performed on Linda Kay Sparkman in July, 1971. On May 29, 1975, in a letter written by Dr. Hines to Plaintiffs' attorney, Dr. Hines for the first time informed Plaintiffs that on July 16, 1971, a tubal ligation had been performed on Linda Kay Sparkman which would permanently

prevent her from becoming pregnant and permanently deprive her of the natural rights of motherhood.

FIRST CAUSE OF ACTION.

[21] Defendants have deprived Plaintiff, Linda Kay Sparkman, of the rights, privileges and immunities secured to her by the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States under color of statutes, ordinances, regulations, customs, usages and practices of the State of Indiana, in that their acts complained of:

Then, the Court in applying this Court's decision in *Donaldson* held:

(A) Are an arbitrary exercise of state power in violation of the due process clause of the Fourteenth Amendment to the Constitution of the United States;

(B) Did not provide procedural safeguards for Linda Kay Sparkman and thereby deprived her of her rights without due process of law in violation of the Fourteenth Amendment to the Constitution of the United States;

(C) Were without standards, thus permitting the sterilization of Linda Kay Sparkman in violation of her rights protected by the First, Fourth, Fifth, Eighth, Ninth and Fourteenth Amendments to the Constitution of the United States;

(D) Constituted an invasion of privacy and the right to control her reproductive functions in violation of the Ninth and Fourteenth Amendments to the Constitution of the United States;

(E) Inflicted cruel and unusual punishment on Linda Kay Sparkman by sterilizing her without any rational justification in violation of the Eighth and Fourteenth Amendments to the Constitution of the United States;

(F) Were used as a method of punishing Linda Kay Sparkman for being allegedly mentally slow and allegedly

difficult to handle in violation of the First, Fourth, Fifth, Ninth and Fourteenth Amendments to the Constitution of the United States;

(G) Were taken in violation of the intent and procedure of state regulations relating to sterilization in violation of the Fifth and Fourteenth Amendments to the Constitution of the United States.

[22] Plaintiff, Linda Kay Sparkman, has suffered damages therefrom and has suffered and continues to suffer physically, mentally and emotionally from the wrongful action of Defendants, individually and jointly, all to her damage in the sum of Five Hundred Thousand Dollars ($500,000.00); and Plaintiff, Linda Kay Sparkman, is entitled to receive punitive damages in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

Second Cause of Action.

[23] Plaintiff, Linda Kay Sparkman, repeats and realleges each and every allegation contained in Paragraphs 1 through 20 inclusive as if fully set forth herein.

[24] Performance of a sterilization operation upon Linda Kay Sparkman by Defendant, John H. Hines, M.D., with the knowledge, approval, acquiescence, aid and assistance of each of the other Defendants, individually and jointly, when said operation was in no manner necessary for the protection of Linda Kay Sparkman's health and safety was an exercise in malpractice by Defendants, and each of them.

[25] That as a result of the malpractice of Defendants, individually and jointly, Plaintiff, Linda Kay Sparkman, has suffered damages and continues to suffer physically, mentally and emotionally, all to her damage in the sum of Five Hundred Thousand Dollars ($500,000.00); and Plaintiff, Linda Kay Sparkman, is entitled to receive punitive damages in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

Third Cause of Action.

[26] Plaintiff, Linda Kay Sparkman, repeats and realleges each and every allegation contained in Paragraphs 1 through 20 inclusive as if fully set forth herein.

[27] Performance of a sterilization operation upon Linda Kay Sparkman by Defendant, John H. Hines, M.D., with the knowledge, approval, acquiescence, aid and assistance of each of the other Defendants, individually and jointly, when said operation was not consented to by Linda Kay Sparkman, and said operation was not necessary for the health or safety of Linda Kay Sparkman, constituted an assault and battery of Plaintiff, Linda Kay Sparkman, by Defendants, thereby injuring Plaintiff, Linda Kay Sparkman.

[28] That as a result of the assault and battery on Plaintiff, Linda Kay Sparkman, by Defendants, individually and jointly, she has suffered damages and continues to suffer physically, mentally and emotionally, all to her damages in the sum of Five Hundred Thousand Dollars ($500,000.00).

Fourth Cause of Action.

[29] Plaintiff, Linda Kay Sparkman, repeats and realleges each and every allegation contained in Paragraphs 1 through 20 inclusive as if fully set forth herein.

[30] The actions of Defendants, Ora E. McFarlin, Warren G. Sunday, Harold D. Stump, John H. Hines, M.D., John C. Harvey, M.D., Harry M. Covell, M.D. and DeKalb Memorial Hospital, Inc., in concert and with the common goal and result of sterilizing Linda Kay Sparkman, deprived said Linda Kay Sparkman of her constitutional and statutory rights to privacy, to the equal protection of the laws and not to be deprived of life or property without the due process of law. The concerted action was taken against Linda Kay Sparkman because of her sex, her marital status and of her allegedly low mental ability, all in violation of 42 U. S. C. § 1985(3).

[31] Plaintiff, Linda Kay Sparkman has suffered damages therefrom and has suffered and continues to suffer physically and mentally from the wrongful action of Defendants, individually and jointly, all to her damage in the sum of Five Hundred Thousand Dollars ($500,000); and Plaintiff, Linda Kay Sparkman, is entitled to receive punitive damages in the sum of Two Hundred Fifty Thousand Dollars ($250,000.00).

FIFTH CAUSE OF ACTION.

[32] Plaintiff, Leo Sparkman, repeats and realleges each and every allegation contained in Paragraphs 1 through 31 inclusive as if fully set forth herein.

[33] That as a result of the wrongful act of Defendants, individually and jointly, in performing the operation of sterilization upon Linda Kay Sparkman, she is no longer able to bear children, as a direct consequence of which, Plaintiff, Leo Sparkman, is now and will be unable in the future to father a child or children of his marriage to Linda Kay Sparkman, and his comfort and happiness in her companionship have been and will in the future be impaired, all to Plaintiff, Leo Sparkman's general damage in the sum of Five Hundred Thousand Dollars ($500,000.00).

WHEREFORE, Plaintiffs pray that this Court:

(A) Grant Plaintiff, Linda Kay Sparkman, compensatory damages in the sum of Two Million Dollars ($2,000,000.00)

(B) Grant Plaintiff, Linda Kay Sparkman, punitive damages in the sum of Seven Hundred Fifty Thousand Dollars ($750,000.00).

(C) Grant Plaintiff, Leo Sparkman, compensatory damages in the sum of Five Hundred Thousand Dollars ($500,000.00).

(D) Declare unconstitutional on its face and as applied those sections of the Acts of 1961, ch. 91, § 1, p. 178; as amended by the Acts of 1973, P. L. 97, § 7, p. 566, "Medical or surgical treatment of incompetent—Consent." [Burns Indiana

Statutes Annotated, Code Edition, 16-8-3-1], which seek to make binding on a minor a consent given by a parent to improper and unnecessary surgery.

(E) Order Defendants, and each of them, to pay and reimburse Plaintiffs for Court costs and reasonable attorney's fees.

(F) Grant Plaintiffs such other and further relief to which they may be entitled.

FINLEY & FINLEY,
/s/ By RICHARD H. FINLEY,
Richard H. Finley,
124 East Rush Street,
Kendallville, IN 46755,
(219) 347-0600,
Attorneys for Plaintiffs.

Plaintiffs hereby make demand for a trial by jury of the action within pursuant to Rule 38 of the Federal Rules of Civil Procedure.

/s/ RICHARD H. FINLEY,
Richard H. Finley.

UNITED STATES DISTRICT COURT.

* * [Caption Omitted in Printing] * *

ANSWER AND MOTIONS TO DISMISS

Comes now the defendant, Harold D. Stump, individually and as Judge of the Circuit Court of DeKalb County, Indiana, and for answer to plaintiffs' complaint alleges and says that:

First Defense.

The complaint fails to state a claim against this defendant either individually or as Judge of DeKalb Circuit Court, DeKalb County, Indiana, upon which relief can be granted.

Second Defense.

1. Defendant Harold D. Stump denies the allegations contained in paragraphs 1, 21, 22, 24, 25, 27, 28, 30, 31, and 33 of the complaint.

2. 2. Defendant Harold D. Stump admits the allegations contained in paragraphs 2, 4, 5, and 12 of the complaint.

3. Defendant Harold D. Stump admits the allegations in paragraphs 6 and 13 that he is Judge of the Circuit Court of DeKalb County, Indiana, a citizen of the United States and a resident of DeKalb County, Indiana, and over 21 years of age, and denies the remaining allegations of paragraphs 6 and 13.

4. Defendant Harold D. Stump is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraphs 3, 7, 8, 9, 10, 11, 14, 15, 16, 17, 18, 19, and 20 of the complaint.

5. Defendant Harold D. Stump in answer to paragraphs 23, 26, 29, and 32, re-alleges as is fully set forth herein his allegations to paragraphs 1 through 20 of the complaint.

Third Defense.

Pursuant to IC 34-4-16.5-3, this defendant would not be liable by reason of the fact that at all times mentioned in plaintiffs' complaint this defendant was the duly appointed and acting judge of the DeKalb Circuit Court and was performing a discretionary function, *i.e.*, enforcement of a law, and acting under authority of a statute.

Fourth Defense.

At the time the alleged wrongful acts set out in plaintiffs' complaint occurred, the plaintiff, Leo Sparkman, was not married to the plaintiff, Linda Kay Sparkman, and therefore no right to bring an action for loss of consortium would lie in the plaintiff Leo Sparkman.

Fifth Defense.

The plaintiffs have no action against the defendant, Harold D. Stump, as an individual, by reason of the fact that as an individual this defendant would not be acting under color of law.

Sixth Defense.

The mother of the plaintiff, Linda Kay Sparkman, acting by and for said plaintiff, petitioned for and consented to the alleged operation of tubal ligation performed on the plaintiff, Linda Kay Sparkman. The consent to the surgical treatment was given by the mother of the plaintiff, Linda Kay Sparkman, pursuant to IC 16-8-3-1, and pursuant to said act the consent was binding on the plaintiff, Linda Kay Sparkman.

Seventh Defense.

The right of action set forth in the complaint did not accrue within two years next before the commencement of this action.

Motions to Dismiss.

The defendant Harold D. Stump, individually and as Judge of the Circuit Court of DeKalb County, Indiana, moves the Court as follows:

1. To dismiss the action as to the plaintiff, Leo Sparkman, because the complaint shows on its face that said plaintiff has no cause of action against this defendant upon which relief can be granted.

2. To dismiss this action against this defendant as an individual because unless this defendant was acting under color of law the Court would have no jurisdiction of this defendant as an individual under and pursuant to 42 U. S. C. § 1983 and § 1985.

Memorandum.

This defendant would concede that a husband has an independent right of action for a tortious wrong done to his wife. *Burk* v. *Anderson et al.*, 232 Ind. 77, 109 N. E. 2d 407 (1952). Even so, the right of action for consortium is founded on the marital relationship which must exist at the time the alleged tort is said to have occurred. 41 Am Jur 2d § 447, Husband and Wife, note 8. This well-recognized rule is perhaps best summed up in the oft quoted statement that you cannot marry a lawsuit.

It would appear from the pleadings that the present cause of action is predicated on the Civil Rights Act which requires as an element of the action that the defendant be acting under color of law at the time the alleged wrong took place. It is respectfully submitted that for that reason the action must fail against the defendant, Harold D. Stump, as an individual.

GATES, GATES & MCNAGNY
By /s/ PHIL M. MCNAGNY, JR.
Phil M. McNagny, Jr.
The Farmers Loan & Trust Co. Bldg.
Columbia City, IN 46725
Telephone: (219) 244-5175
Attorneys for Defendant,
Harold D. Stump

UNITED STATES DISTRICT COURT

* * (Caption Omitted in Printing] * *

MOTION TO DISMISS

Comes now defendants, John H. Hines, M.D., Harry M. Covell, M.D., and Warren G. Sunday, by their attorneys Barrett, Barrett & McNagny and move the Court as follows:

1. For an order dismissing this action against these defendants for the reason that the Court lacks subject matter jurisdiction in the above captioned case pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure or, in the alternative;

2. For an order dismissing this action against these defendants for the reason that the plaintiff has failed to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

MEMORANDUM

(Deleted)

BARRETT, BARRETT & MCNAGNY
By: WILLIAM F. MCNAGNY

UNITED STATES DISTRICT COURT

* * (Caption Omitted in Printing] * *

ANSWER OF ORA E. McFARLIN

Comes now Ora E. McFarlin, counsel H. Charles Winans and for answer to plaintiffs Complaint alleges and says:

I. General Denial

For answer to plaintiffs complaint says:

(1.) That the statements made in plaintiffs complaint "preliminary statement" are untrue and inaccurate and that this defendant denies the truth or accuracy of the statements made therein; and further that this defendant denies the correctness of the conclusions of fact and law stated therein; and further that this defendant denies that this defendant has any liability to the plaintiffs individually or separately for any act or omission whatsoever; and further that this defendant denies that she has caused any infringement of constitutional right or privilege of either of the plaintiffs, jointly or severally; and further that the attempted application of the alleged constitutional rights of the plaintiffs to the factual situation described is erroneous, improper and not within the purview of the United States Constitution or any judicial application thereof; and finally this defendant denies that the plaintiffs or either of them have by their complaint, the facts alleged therein, or the parties named and served created a proper legal issue of constitutionality of any statute of the State of Indiana.

II. Specific Denial

Defendant Ora E. McFarlin denies specifically or is without knowledge as to the accuracy of, each and every material allegation of plaintiffs complaint in numbered paragraphs (1); (3);

and (13) in so far as same alleges that Linda Kay Sparkman was without representation, or that the judge acted only under color of law; (14); (17); (18); (19); (20); (21); (22); (23); (24); (25); (26); (27); (28); (29); (30); (31); (32); (33); the defendant further denies that the plaintiffs or either of them are entitled to any damages against this defendant compensatory or punitive.

III. Admissions

Defendant Ora E. McFarlin admits specifically the allegations in plaintiffs complaint in paragraphs numbered (2); (4); (11); and (12).

IV. Not Applicable to This Defendant

Defendant Ora E. McFarlin denies that there is any application whatsoever of the allegations in the following numbered paragraphs to this defendant, to wit: (5); (6); (7); (8); (9); (10); (15); (16).

WHEREFORE the defendant Ora E. McFarlin prays the court to find against the plaintiffs jointly and severally and adjudge that they take nothing by their complaint and that a judgment be entered in favor of the defendant Ora E. McFarlin for the costs of this action.

/s/ H. CHARLES WINANS
H. Charles Winans
Attorney for Defendant
Ora E. McFarlin

UNITED STATES DISTRICT COURT

* * (Caption Omitted in Printing] * *

MOTION TO DISMISS

Come now the defendants, John C. Harvey, M.D., and DeKalb Memorial Hospital, Inc., by their attorney, Carl J. Suedhoff, Jr., and move the Court as follows:

1. For an order dismissing this action against these defendants for the reason that the Court lacks subject matter jurisdiction in the above captioned case pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure or, in the alternative;

2. For an order dismissing this action against these defendants for the reason that the plaintiffs has failed to state a claim upon which relief can be granted pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure.

Respectfully submitted,

HUNT, SUEDHOFF, BORROR,
EILBACHER & LEE

By: /s/ CARL J. SUEDHOFF, JR.
Carl J. Suedhoff, Jr.
6th Floor, Lincoln Bank Tower
Fort Wayne, Indiana 46802
Telephone: 219 423-1311
Attorney for Defendants, John C. Harvey, M.D. and DeKalb Memorial Hospital, Inc.

STATE OF INDIANA
COUNTY OF DEKALB } SS:

PETITION TO HAVE TUBAL LIGATION PERFORMED ON MINOR AND INDEMNITY AGREEMENT

Ora Spitler McFarland, being duly sworn upon her oath states that she is the natural mother of and has custody of her daughter, Linda Spitler, age fifteen (15) being born January 24, 1956 and said daughter resides with her at 108 Iwo Street, Auburn, DeKalb County, Indiana.

Affiant states that her daughter's mentality is such that she is considered to be somewhat retarded although she is attending or has attended the public schools in DeKalb Central School System and has been passed along with other children in her age level even though she does not have what is considered normal mental capabilities and intelligence. Further, that said affiant has had problems in the home of said child as a result of said daughter leaving the home on several occasions to associate with older youth or young men and as a matter of fact having stayed overnight with said youth or men and about which incidents said affiant did not become aware of until after such incidents occurred. As a result of this behavior and the mental capabilities of said daughter, affiant believes that it is to the best interest of said child that a Tubal Ligation be performed on said minor daughter to prevent unfortunate circumstances to occur and since it is impossible for the affiant as mother of said minor child to maintain and control a continuous observation of the activities of said daughter each and every day.

Said affiant does hereby in consideration of the Court of the DeKalb Circuit Court approving the Tubal Ligation being performed upon her minor daughter does hereby covenant and agree to indemnify and keep indemnified and hold Dr. John Hines, Auburn, Indiana, who said affiant is requesting perform said operation and the DeKalb Memorial Hospital, Auburn,

Indiana, whereas said operation will be performed, harmless from and against all or any matters or causes of action that could or might arise as a result of the performing of said Tubal Ligation.

IN WITNESS WHEREOF, said affiant, Ora Spitler McFarlin, has hereunto subscribed her name this 9th day of July, 1971.

/s/ ORA SPITLER MCFARLIN
Ora Spitler McFarlin
Petitioner

Subscribed and sworn to before me this 9th day of July, 1971.

/s/ WARREN G. SUNDAY
Warren G. Sunday
Notary Public

My commission expires January 4, 1975.

I, Harold D. Stump, Judge of the DeKalb Circuit Court, do hereby approve the above Petition by affidavit form on behalf of Ora Spitler McFarlin, to have Tubal Ligation performed upon her minor daughter, Linda Spitler, subject to said Ora Spitler McFarlin covenanting and agreeing to indemnify and keep indemnified Dr. John Hines and the DeKalb Memorial Hospital from any matters or causes of action arising therefrom.

/s/ HAROLD D. STUMP
Judge, DeKalb Circuit Court

Dated July 9, 1971